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**Preparatory Commission for the International
Criminal Court**

**Working Group on Rules of Procedure and Evidence
concerning Part 6 of the Statute**

New York

13-31 March 2000

12-30 June 2000

27 November-8 December 2000

**Discussion paper proposed by the Coordinator regarding
rules of procedures and evidence relating to Part 6 of the
Rome Statute, concerning the trial**

Chapter 10

Section I

Offences against the administration of justice under article 70

Rule 6.32

Exercise of jurisdiction

1. Before deciding whether to exercise jurisdiction, the Court may consult with States Parties that may have jurisdiction over the offence.
2. In making a decision whether or not to exercise jurisdiction, the Court may consider, in particular:
 - (a) The availability and effectiveness of prosecution in a State Party;
 - (b) The seriousness of an offence;
 - (c) The possible joinder of charges under article 70 with charges under articles 5 to 8;
 - (d) The need to expedite proceedings;
 - (e) Links with an ongoing investigation or a trial before the Court; and
 - (f) Evidentiary considerations.



3. The Court shall give favourable consideration to a request from the host State for a waiver of the power of the Court to exercise jurisdiction in cases where the host State considers such a waiver to be of particular importance.

4. If the Court decides not to exercise its jurisdiction, it may request a State Party to exercise jurisdiction pursuant to article 70, paragraph 4.

Rule 6.33

Application of the Statute and the Rules

1. Unless otherwise provided in sub-rules 2 and 3, rule 6.32 and rules 6.34 to 6.39, the Statute and the Rules shall apply *mutatis mutandis* to the Court's investigation, prosecution and punishment of offences defined in article 70.

2. The provisions of Part 2, and any rules thereunder, shall not apply, with the exception of article 21.

3. The provisions of Part 10, and any rules thereunder, shall not apply, with the exception of articles 103, 107, 109 and 111.

Rule 6.34

Periods of limitation

1. If the Court exercises jurisdiction in accordance with rule 6.32, it shall apply the periods of limitation set forth in this rule.

2. Offences defined in article 70 shall be subject to a period of limitation of five years from the date on which the offence was committed, provided that during this period no investigation or prosecution has been initiated. The period of limitation shall be interrupted, if an investigation or prosecution has been initiated during this period, either before the Court or by a State Party with jurisdiction over the case pursuant to article 70, paragraph 4 (a).

3. Enforcement of sanctions imposed with respect to offences defined in article 70 shall be subject to a period of limitation of 10 years from the date on which the sanction has become final. The period of limitation shall be interrupted with the detention of the convicted person or while the person concerned is outside the territory of the States Parties.

Rule 6.35

Investigation, prosecution and trial

1. The Prosecutor may initiate and conduct investigations with respect to the offences defined in article 70 on his or her own initiative, on the basis of information communicated by a Chamber or any reliable source.

2. Articles 53 and 59, and any rules thereunder, shall not apply.

3. For purposes of article 61, the Pre-Trial Chamber may make any of the determinations set forth in that article on the basis of written submissions, without a hearing, unless the interests of justice otherwise require.

4. A Trial Chamber may, as appropriate and taking into account the rights of the defence, direct that there be joinder of charges under article 70 with charges under articles 5 to 8.

Rule 6.36

Sanctions under article 70

1. If the Court imposes sanctions with respect to article 70, this rule shall apply.
2. Article 77, and any rules thereunder, shall not apply, with the exception of an order of forfeiture under article 77, paragraph 2 (b), which may be ordered in addition to imprisonment or a fine or both.
3. Each offence may be separately fined and those fines may be cumulative. Under no circumstances may the total amount exceed 50 per cent of the value of the convicted person's identifiable assets, liquid or realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants.
4. In imposing a fine the Court shall allow the convicted person a reasonable period in which to pay the fine. The Court may provide for payment of a lump sum or by way of instalments during that period.
5. If the convicted person does not pay a fine imposed in accordance with the conditions set forth in sub-rule 4, appropriate measures may be taken by the Court pursuant to rules 10.23 to 10.28 and in accordance with article 109. Where, in cases of continued wilful non-payment, the Court, on its own motion or at the request of the Prosecutor, is satisfied that all available enforcement measures have been exhausted, it may as a last resort impose a term of imprisonment in accordance with article 70, paragraph 3. In the determination of such term of imprisonment, the Court shall take into account the amount of fine paid.

Rule 6.37

International cooperation and judicial assistance

1. With regard to offences under article 70, the Court may request a State to provide any form of international cooperation or judicial assistance corresponding to those forms set forth in Part 9. In any such request, the Court shall indicate that the basis for the request is an investigation or prosecution of offences under article 70.
2. The conditions for providing international cooperation or judicial assistance to the Court with respect to offences under article 70 shall be those set forth in article 70, paragraph 2.

Rule 6.38

Ne bis in idem

In respect of offences under article 70, no person shall be tried before the Court with respect to conduct which formed the basis of an offence for which the person has already been convicted or acquitted by the Court or another court.

Rule 6.39

Immediate arrest

In the case of an alleged offence under article 70 committed in the presence of a Chamber, the Prosecutor may orally request that Chamber to order the immediate arrest of the person concerned.

Section II

Misconduct before the Court under article 71

Rule 6.40

Disruption of proceedings

Having regard to article 63, paragraph 2, the Presiding Judge of the Chamber dealing with the matter may, after giving a warning:

- (a) Order a person disrupting the proceedings of the Court to leave or be removed from the courtroom; or,
- (b) In case of repeated misconduct, order the interdiction of that person from attending the proceedings.

Rule 6.41

Refusal to comply with a direction by the Court

1. When the misconduct consists of deliberate refusal to comply with an oral or written direction by the Court, not covered by rule 6.40, and that direction is accompanied by a warning of sanctions in case of breach, the Presiding Judge of the Chamber dealing with the matter may order the interdiction of that person from the proceedings for a period not exceeding 30 days or, if the misconduct is of a more serious nature, impose a fine.
2. If the person committing misconduct as described in sub-rule 1 is an official of the Court, or a defence counsel, or a legal representative of victims, the Presiding Judge of the Chamber dealing with the matter may also order the interdiction of that person from exercising his or her functions before the Court for a period not exceeding 30 days.
3. If the Presiding Judge in cases under sub-rules 1 and 2 considers that a longer period of interdiction is appropriate, the Presiding Judge shall refer the matter to the Presidency, which may hold a hearing to determine whether to order a longer or permanent period of interdiction.
4. A fine imposed under sub-rule 1 shall not exceed 2,000 euros, or the equivalent amount in any currency, provided that in cases of continuing misconduct, a new fine may be imposed on each day that the misconduct continues, and such fines shall be cumulative.
5. The person concerned shall be given an opportunity to be heard before a sanction for misconduct, as described in this rule, is imposed.

Rule 6.42

Conduct covered by both articles 70 and 71

If conduct covered by article 71 also constitutes one of the offences defined in article 70, the Court shall proceed in accordance with article 70 and rules 6.32 to 6.39.

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Rule 6.30

Sub-rule 1 should be amended to read:

1. In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.

Rule 6.30 *ter*

1. Sub-rules 2 and 3 (a) should be amended to read:

2. A legal representative of a victim shall be entitled to attend and participate in the proceedings in accordance with the terms of the ruling of the Chamber and any modification thereof given under rules 6.30 and 6.30 *bis*. This shall include participation in hearings unless, in the circumstances of the case, the Chamber concerned is of the view that the representative's intervention should be confined to written observations or submissions. The Prosecutor and the defence shall be allowed to reply to any oral or written observation by the legal representative for victims.



3. (a) When a legal representative attends and participates in accordance with this rule, and wishes to question a witness, including questioning under rules 6.26 and 6.27, an expert or the accused, the legal representative must make application to the Chamber. The Chamber may require the legal representative to provide a written note of the questions and in that case the questions shall be communicated to the Prosecutor and, if appropriate, the defence, who shall be allowed to make observations within a time limit set by the Chamber.

Rule 6.30 *quater*

1. Replace sub-rules 5 and 6 with the following:

5. In a manner consistent with the ruling made under rules 6.30 to 6.30 *ter*, victims or their legal representatives participating in proceedings shall, in respect of those proceedings, be notified by the Registrar in a timely manner of:

(a) Proceedings before the Court, including the date of hearings and any postponements thereof, and the date of delivery of the decision;

(b) Requests, submissions, motions and other documents relating to such requests, submissions or motions.

2. Renumber sub-rules 7, 8 and 9 as 6, 7 and 8, and amend references in sub-rules 4 and 7 to read "sub-rules 5 and 6".

Rule 6.30 *quinquies*

Insert a new rule with the following text:

A Chamber may seek the views of victims or their legal representatives participating pursuant to rules 6.30 to 6.30 *ter* on any issue, *inter alia*, in relation to issues referred to in rules 5.5, 5.7, 5.22, 5.25, 6.15, 6.25 and 9.16. In addition, a Chamber may seek the views of other victims, as appropriate.

* * *

As a consequence of the proposals above, the following amendments should be made in other provisions (in the order the rules appear in document PCNICC/2000/WGRPE/INF/1).

Rule 6.6

Sub-rules 2 and 3 should be amended to read as follows:

2. The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1.

3. A written observation submitted under sub-rule 1 shall be filed with the Registrar, who shall provide copies to the Prosecutor and the defence. The Chamber shall determine what time limits shall apply to the filing of such observations.

Rule 5.5

Sub-rule (d) should be deleted.

Rule 5.7

Sub-rule 3 should be deleted.

Rule 5.17

Sub-rule 3 should be amended to read:

3. Before imposing or amending any conditions restricting liberty, the Pre-Trial Chamber shall seek the views of the Prosecutor, the person concerned, any relevant State and victims that have communicated with the Court in that case and who the Chamber considers could be at risk as a result of a release or conditions imposed.

Rule 5.18

Sub-rule (h) should be deleted and the second sentence of sub-rule 10 should read:

Subject to any restrictions concerning confidentiality and the protection of national security information, the record may be consulted by the Prosecutor, the person and victims or their legal representatives participating in the proceedings pursuant to rules 6.30 to 6.30 *ter*.

Rule 5.19

Sub-rule 2 (c) should be deleted.

Sub-rule 7 should be amended to read:

7. During the hearing on the merits, the Prosecutor and the person shall present their arguments in accordance with article 61, paragraphs 5 and 6.

Sub-rule 8 should be amended to read:

8. The Pre-Trial Chamber shall permit the Prosecutor and the person, in that order, to make final observations.

Rule 5.22

Sub-rule 2 should be deleted and the following sub-rules renumbered accordingly.

Sub-rule 3 should be amended to read:

3. The decision of the Pre-Trial Chamber shall be notified to the Prosecutor and, if possible, to the person concerned or his or her counsel.

Rule 5.25

Sub-rule 1 should be amended to read:

1. If the Prosecutor seeks to amend charges already confirmed before the trial has begun, in accordance with article 61, the Prosecutor shall make a written request to the Pre-Trial Chamber, and that Chamber shall so notify the accused.

Sub-rule 2 should be amended to read:

2. Before deciding whether to authorize the amendment, the Pre-Trial Chamber may request the accused and the Prosecutor to submit written observations on certain issues of fact or law.

Rule 5.26

The rule should be amended to read:

The decision of the Pre-Trial Chamber on the confirmation of charges and the committal of the accused to the Trial Chamber shall be notified, if possible, to the Prosecutor, the person concerned and his or her counsel. Such decision and the record of the proceedings of the Pre-Trial Chamber shall be transmitted to the Presidency.

Rule 6.10

Sub-rule 1 shall be amended to read:

1. Promptly after it is constituted, the Trial Chamber shall hold a status conference in order to set the date of the trial. The Trial Chamber, on its own motion, or at the request of the Prosecutor or the defence, may postpone the date of the trial. The Trial Chamber shall notify the trial date to all those participating in the proceedings. The Trial Chamber shall ensure that this date and any postponements are made public.

Rule 6.11

No amendment to sub-rule 1 is proposed at this time as we are awaiting the outcome of the discussions on rule 2.14.

Rule 6.25

Sub-rule 1 should be amended to read:

1. After having proceeded in accordance with article 65, paragraph 1, the Trial Chamber, in order to decide whether to proceed in accordance with article 65, paragraph 4, may invite the views of the Prosecutor and the defence.

Rule 6.18

Sub-rule 2 (b), as it appears in document PCNICC/2000/WGRPE(6)/RT.9, should be amended to read:

(b) The Prosecution and the defence have the right to question that witness about relevant matters related to the witness's testimony and its reliability, the credibility of the witness and other relevant matters;

Rule 6.22**Sub-rule 2 should be amended to read:**

2. The Presiding Judge shall invite the Prosecutor and the defence to make their closing statements. The defence shall always have the opportunity to speak last.

Rule 6.23**The first and second sentences of sub-rule 1 should be amended to read:**

1. After the closing statements, the Trial Chamber shall retire to deliberate in camera. The Trial Chamber shall inform all those who participated in the proceedings of the date on which the Trial Chamber will pronounce its decision.

Rule 6.24**Sub-rule 2 (b) should be amended to read:**

- (b) All others who participated in the proceedings, in a working language of the Court.

Rule 6.26**Sub-rule 1 should be amended to read:**

1. In accordance with article 69, paragraph 2, a Chamber may allow a witness to give viva voce (oral) testimony before the Chamber by means of audio or video technology, provided that such technology permits the witness to be examined by the Prosecutor, the defence and by the Chamber itself, at the time that the witness so testifies.

Rule 6.27**Sub-rule (b) should be amended to read:**

- (b) If the witness who gave the previously recorded testimony is present before the Trial Chamber, he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings.

Rule 6.8

Pending the outcome of the consultations regarding this rule, no amendment is proposed at this time.

Rule 9.16

It should be submitted to the Working Group on Parts 9 and 10 that the last sentence of rule 9.16, sub-rule 1, should be deleted.